

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE FARM FIRE & CASUALTY, as
subrogee for Sandra J. Slisco,

Plaintiff,

v.

BROAN-NUTONE, LLC, a foreign limited
liability company and NUTONE, INC., a
foreign corporation and wholly-owned
subsidiary of BROAN-NUTONE, LLC,

Defendants.

No. 08-CV-876 (MJP)

STIPULATION TO AMEND CASE
SCHEDULE AND TRIAL DATE AND
ORDER THEREON

NOTE FOR MOTION CALENDAR:
MARCH 23, 2009

COMES NOW, the plaintiff State Farm Fire & Casualty ("State Farm") and defendant Broan-NuTone, LLC ("Broan-NuTone"), by and through their attorneys, and hereby stipulate and agree that the outstanding dates forth in the Court's Order Setting Trial Date & Related Dates, including the trial date, each be postponed approximately 60 days to permit the parties to pursue mediation and settlement and ask the Court to approve this postponement. The parties submit that good cause exists to amend the scheduling order because of complications and delays arising from locating and deposing out-of-state witnesses, because of the complexities of the engineering and expert evidence in the case, and for reasons of efficiency and the conservation of

1 the parties' resources that would achieved by permitting mediation prior to additional and costly
2 discovery.
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5 This case arises from a residential fire that occurred on June 27, 2005 at the home of
6 Sandra and Erin Slisco, located at 3212 150th Place S.E., Mill Creek, Washington. The property
7 insurer, State Farm, alleges that a Broan-NuTone fan, a Model 689-H ceiling ventilation fan,
8 caused the fire. State Farm filed this subrogation action seeking to recoup \$322,564.25 on the
9 basis of design and manufacturing defects in the fan, as well as on failure to warn and warranty
10 grounds. A formal mediation pursuant to the Court's Order is set for April 6, 2009 before Tom
11 Harris, a mediator from the Washington Arbitration and Mediation Service.
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19 The parties have actively engaged in discovery for months, exchanging multiple sets of
20 written discovery and taken depositions of factual witnesses. The parties agree, however, that
21 further discovery, and in particular expert depositions, is necessary and that the current case
22 deadlines and trial date do not allow for completion of that discovery. While the parties had
23 originally sought delay of the discovery cut-off (currently April 1, 2009) and dispositive motion
24 deadline (currently April 22, 2009) only, that proposal was rejected by the Court as not providing
25 sufficient detail of good cause, or sufficient time for the Court's decision on dispositive motions
26 prior to trial, which is currently set for July 20, 2009. Accordingly, the parties have now
27 stipulated and agreed that a 60-day postponement of the trial date and the other outstanding case
28 deadlines as listed below is supported by good cause, as explained below, and is prudent and
29 necessary to allow discovery and dispositive motions practice, among other things, to be fully
30 developed. Each party has discussed this postponement with its respective clients and each
31 client agrees to the postponement and the reason for the postponement.
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45 First, good cause exists for postponement because State Farm's subrogee, the property
46 owner Sandra Slisco, along with her daughter Erin Slisco—who was the first eyewitness to the
47 fire—have moved out of the State of Washington. Efforts to locate and serve subpoenas at
48 various addresses and cities in Washington over the past months have proved fruitless. Initial
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1 attempts to serve the Sliscos at the Mill Creek home were unsuccessful, as the Sliscos had moved
2 out. Similarly, attempts to serve subpoenas at Sandra Slisco's last-known place of employment
3 in Everett, Washington failed as she no longer worked there. The daughter, Erin Slisco, was then
4 traced to an address in Bellingham, Washington, but repeated efforts to serve her there likewise
5 failed. (Complicating locating and serving Erin is the fact that she apparently may now go by
6 another name, "Aaron".) Two additional addresses for the Sliscos were obtained in Lynwood,
7 Washington, in January 2009, but once again, attempted service at these locations proved
8 fruitless. The parties recently learned that both individuals are now located in southern
9 California, in Cathedral City. Both State Farm and Broan-NuTone, moreover, wish to depose the
10 individuals prior to the end of discovery. An extension of the case deadlines is necessary to
11 allow for the locating, scheduling, and taking (and perhaps even the compelling) of the
12 depositions of the Sliscos.
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15 Second, between the parties there are five different expert witnesses in the case who have
16 submitted four expert reports, plus two rebuttal expert reports. The reports are hundreds of pages
17 and involve complex issues of electrical engineering, metallurgy and combustion science. No
18 depositions of any expert witness has yet occurred, as the parties have focused completing
19 rebuttal expert reports and depositions of factual witnesses, including depositions of four
20 responding fire fighters (that have occurred) and depositions of the homeowner and daughter
21 (that have not occurred due to their transitory nature described above).
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24 Finally, there is a formal Court-ordered mediation scheduled for April 6, 2009 before
25 Tom Harris. Given that there exists the potential for a mediated resolution of the case prior to
26 the undertaking of the costs and expenses involved in taking depositions of multiple expert
27 witnesses and traveling out of state to take factual depositions, the parties jointly stipulate and
28 agree that good cause exists to postpone the outstanding case deadlines 60 days to permit the
29 scheduled mediation to proceed. So doing would both be more efficient and better facilitate
30 settlement than if the parties were to expend the significant resources (in terms of legal and
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1 experts' fees, among other things) necessary to conduct the above-described expert and out-of-
2 state depositions prior to mediating the case.
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4 Accordingly, the parties propose the following amended case schedule, which reflects a
5 60-day postponement of the trial date and other case deadlines and provides the Court more than
6 12 weeks before trial to decide any dispositive motions:
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- 10 ▪ TRIAL DATE: September 28, 2009 at 9:00 am
- 11 ▪ Discovery completed by: June 1, 2009
- 12 ▪ All dispositive motions must be filed by and noted on the motion calendar no later
13 than the Fourth Friday thereafter: June 24, 2009
- 14 ▪ Motions in limine filed by and noted on the motion calendar no later than the
15 second Friday thereafter: August 31, 2009
- 16 ▪ Agreed pre-trial order due: September 2, 2009
- 17 ▪ Trial briefs, proposed voir dire questions, proposed jury instructions, and trial
18 exhibits due: September 23, 2009
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27 Should the Court accept the above schedule, the parties stipulate and agree to conduct
28 and complete expert depositions and other depositions following the mediation on April 6, 2009,
29 specifically during the third and fourth weeks of April 2009 and during the month May 2009.
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35 DATED: March 23, 2009
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2 /s/ Craig Evezich

3 Craig Evezich, Esq., WSBA No. 20957
4 E-Mail: craig@evezich.com
5 Evezich Law Offices, PLLC
6 600 University Street, Suite 2701
7 Seattle, WA 98101
8 Telephone: (206) 576-6900
9 Facsimile: (206) 624.8241
10
11

12 Attorney for Plaintiff
13 State Farm Fire & Casualty
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/s/ Eric S. Lent

Eric S. Lent, WSBA No. 38308
ELent@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Defendant
Broan-NuTone, LLC

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3 IT IS SO ORDERED:
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6 Dated this 30th day of March, 2009
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11 Marsha J. Pechman
12 United States District Judge
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CERTIFICATE OF SERVICE

On March 23, 2009, I caused to be served upon counsel of record, at the addresses stated below, via the method of service indicated, a true and correct copy of the foregoing

STIPULATION TO AMEND CASE SCHEDULE AND TRIAL DATE AND ORDER

THEREON.

Attorney for Plaintiff

Craig Evezich, Esq.
Evezich Law Offices, PLLC
600 University Street, Suite 2701
Seattle, WA 98101
Telephone: (206) 576-6900
Facsimile: (206) 624.8241
E-Mail: craig@evezich.com

☒ By CM/ECF
☐ By U.S. Mail
☐ By Messenger

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: March 23, 2009

/s/ Julia D. Wood

Julia D. Wood
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000
E-mail: jdwood@perkinscoie.com

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000